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EXAMINER

TORRES, ALICIA M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3671

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,747

Applicant(s)

KRETSCH, KEVIN R.

Examiner

Alicia M Torres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-20 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-14 and 21-27 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11072003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 5, 8-14, 21, 22, 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Pansini '791.

3. In regards to claims 1, 2, 4, and 5, Pansini '791 discloses a weed control system for a body of water, the system comprising:

A weed contacting member (28, 32) suspendable within the body of water proximate a bed of weeds; and

A drive member (at 47) for automatically moving the weed contacting member (28, 32) in a repeating circular arc pattern over the bed of weeds, the weed contacting member (28, 32) freely hanging down from a support member (11) located at a surface of the body of water such that the weed contacting member (28, 32) repeatedly brushes against any weeds in the bed of weeds, as per claim 1; and

Wherein the weed contacting member (28, 32) is flexibly attached to the support member (11) which is located approximately on or above a surface of the body of water, as per claim 2; and

wherein the drive member (at 47) is reversible and is configured to change a direction of

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movement of the weed contacting member (28, 32) when a predetermined time limit is reached, as per claim 4; and

wherein the drive member (at 47) includes a pair of opposing nozzles (38, 39) which alternately eject a jet of water to drive the drive member (at 47), as per claim 5.

4. In regards to claim 8, Pansini '791 discloses a weed control system for a body of water, the system comprising:

A weed contacting member (20); and

Water activated means including a nozzle (38, 39) which emits water to develop thrust for moving the weed contacting member (20) in a repeating pattern through the body of water such that the weed contacting member (20) repeatedly contacts any weeds in a path of the weed contacting member (20).

5. In regards to claims 9-11, Pansini '791 discloses a weed control system for a body of water, the system comprising:

a weed contacting member (28, 32); and

Wherein the weed contacting member (28, 32) is moved in a repeating pattern through the body of water such that the weed contacting member (28, 32) repeatedly contacts any weeds in a path of the weed contacting member;

wherein water activated means including a nozzle (38) which emits water to develop thrust for moving the weed contacting member (20); and

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Wherein water activated means further comprises a second nozzle (39) and a water pump coupled to the nozzle (38) and the second nozzle (39) which open in generally opposite directions from each other and which are alternately activated, as per claim 9; and

Wherein the weed contacting member (20) is suspended from a support member (11) which is rotatably coupled to a stationary unit (14) proximate the body of water and which extends over a surface of the body of water, as per claim 10; and

wherein water activated means (38, 39) automatically changes a direction of movement of the weed contacting member (28, 32) when a predetermined time limit is reached, as per claim 11.

6. In regards to claims 12-14, Pansini '791 discloses A weed control system for a body of water, the system comprising:

a support member (11);

a buoyant member (22) coupled to the support member (11) to keep the support member (11) at or above a surface of the body of water;

a weed contacting member (28, 32) suspended from the support member (11) to descend beneath the surface of the body of water; and

a driver (38, 39) to move the support member (11) across the surface of the body of water in a repeating pattern such that the weed contacting member (28, 32) also moves in a repeating pattern and repeatedly brushes against any weeds beneath the support member (11), as per claim 12; and

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wherein the support member (11) includes an elongated pipe having a first end rotatably coupled to a stationary unit (14) proximate the body of water, as per claim 13; and

wherein the driver (38, 38) includes a water activated driver coupled to the support member (11), as per claim 14.

7. In regard to claims 21, 22, and 24, Pansini '791 discloses a weed control system for a body of water, the system comprising:

An elongated support member (11) positioned parallel to a surface of a body of water and positionable at or above the surface, the elongated support member (11) having a first end rotatably coupled to a stationary unit (14) proximate the body of water;

A weed contacting member (28, 32) suspended from the support member (11) and located beneath the surface; and

A reversible driver (at 47) coupled proximate a second end of the elongated support member (11) to drive the elongated support member (11) in a rotating manner repeatedly back and forth across the surface of a section of the body of water such that the weed contacting member (28, 32) is repeatedly pulled back and forth beneath the surface of the section to repeatedly contact any weeds located in that section, as per claim 21; and

Wherein the reversible driver (at 47) is water activated, as per claim 22; and

Wherein the reversible driver (at 47) is motor driven, as per claim 24.

8. In regard to claims 25 and 26, Pansini '791 discloses a device wherein the following method of controlling weeds in a body of water is inherent, the method comprising repeatedly

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brushing a bed of weeds with a weed contacting member (28, 32) which is suspended and freely hanging down from a support member (11) located proximate a surface of the body of water, as per claim 25; and

Wherein repeatedly brushing includes periodically reversing a direction of the weed contacting member (28, 32) in response to a timer (the regulating mechanism that rotates ring 40, see column 3, lines 40-49) such that the weed contacting member (28, 32) moves back and forth over the bed of weeds, as per claim 26.

9. In regards to claim 27, Pansini '791 discloses a method of controlling weeds in a body of water, the method comprising:

coupling a first end of a support member (11) to a stationary unit (14) proximate the body of water such that the support member (11) extends over a surface of the body of water;

suspending a weed contacting member (28, 32) from the support member (11) such that the weed contacting member (28, 32) is located beneath the surface; and

moving the support member (11) in a repeating circular arc pattern such that the weed contacting member (28, 32) repeatedly brushes against any weeds located proximate the weed contacting member to disintegrate the weeds.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pansini '791 in view of Thompson et al., hereafter Thompson.

The device is disclosed as applied to claims 1 and 21 above. However, Pansini fails to disclose wherein the weed contacting member includes a cross-bar having a plurality of tines extending from a body of the cross-bar.

Thompson discloses a weed rake including a cross-bar (35) having a plurality of tines (36) extending from a body of the cross-bar (35).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the rake structure of Thompson on the cleaning apparatus of Pansini '791 in order to engage and move weeds.

Response to Arguments

12. Applicant's arguments, see pages 1 and 2, filed November 7, 2003, with respect to the rejection(s) of claim(s) 1-3, 5, 7, 8, 10 and 25 under 35 USC 102(b) as being anticipated by Majkrzak U.S. 5,359,835 have been fully considered and are persuasive. Therefore, the rejection

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has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Thompson and Majkrzak.

13. Applicant's arguments, see page 4, filed November 7, 2003, with respect to the rejection(s) of claim(s) 12-14 under 35 USC 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Pansini '791.

14. Applicant's arguments, see page 5, filed November 27, 2003, with respect to the rejection(s) of claim(s) 27 under 35 USC 102(b) as being anticipated by Thompson have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Thompson and Majkrzak.

15. In regards to applicant's argument regarding claims 21, 23 and 24, that there is no reason to combine Thompson and Majkrzak, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, converting the linear motion of the device to a circular pattern is well within the combined teachings of Thompson et al. and Majkrzak, and only involves the switching of the means which moves the weed contacting member through the body of water to provide an alternative arrangement for moving the weed contacting member of Thompson et al. through the water.

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16. Regarding the inclusion on Pansini '791 in the instant Office Action, it is noted by the examiner that Pansini discloses a swimming pool cleaner, the cleaner being inherently capable of performing the function of the apparatus of the present invention. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Allowable Subject Matter

17. Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Claims 15-20 are allowed.

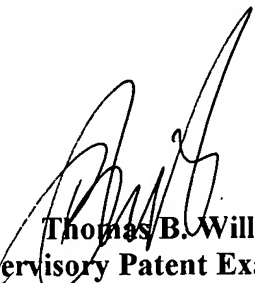
Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT

April 21, 2004